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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,626	09/16/2003	Zoran Minevski	LYNN/0173.C	1915
24945	7590	07/27/2007		
STREETS & STEELE 13831 NORTHWEST FREEWAY SUITE 355 HOUSTON, TX 77040			EXAMINER BUMGARNER, MELBA N	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 07/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/663,626

Applicant(s)

MINEVSKI ET AL.

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-52 and 55-105 is/are pending in the application.
- 4a) Of the above claim(s) 41-50 and 68-101 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 and 6-40 is/are allowed.
- 6) ☒ Claim(s) 51, 52, 55-67 and 102-105 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 51, 52, 62-65, and 67 are rejected as understood, under 35 U.S.C. 102(b) as being anticipated by Haszmann et al. (5,354,390). Haszmann et al. disclose a method of treating a metallic surgical implant or component comprising performing anodic oxidation of a surface of the implant or component, the surface consists of a titanium alloy and the anodic oxidation is performed with the surface disposed in an aqueous solution consisting essentially of a phosphorus-containing compound or a phosphate-containing compound, the anodic oxidation is not performed at elevated temperature and pressure. The solution is an electrolyte solution of an aqueous solution of disodium hydrogen phosphate.

3. Claims 55-61, 102, 103, and 105 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishizawa (5,478,237). Ishizawa discloses a method of treating a metallic surgical implant or component comprising anodically treating a surface of the metallic implant or component of titanium alloy and depositing hydroxyapatite over the treated surface. The surface is disposed in an aqueous phosphoric acid. The anodic oxidation at controlled voltage between 10 and 600 V and the surface takes on gold color. Ishizawa shows metal of Ti6Al4V.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haszmann et al. Haszmann et al. disclose a method that shows the limitations as described above; however, they do not show phosphate-containing compound of phosphoric acid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use phosphoric acid for phosphate concentration in aqueous solution.

6. Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haszmann et al. in view of Ishizawa. Haszmann et al. disclose a method that shows the limitations as described above; however, they do not show depositing hydroxyapatite over the treated surface. Ishizawa teaches a method of depositing hydroxapatite over the anodically treated surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made as to include the step of Ishizawa in the method of Haszmann et al. in order to improve the affinity to bone tissue in which the implant is implanted in view of Ishizawa.

***Allowable Subject Matter***

7. Claims 1-4 and 6-40 are allowed.

***Response to Arguments***

8. Applicant's arguments filed May 15, 2007 with respect to the rejected claims have been fully considered but they are not persuasive. It is believed that the claimed limitations are shown

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in the prior art. Applicant's specification also discloses depositing (coating) of hydroxyapatite over the treated surface by hydrothermal treatment (page 9). The method step of anodic oxidation in the prior art is not performed at 700 °C.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "Melba Bumgarner".

Melba Bumgarner  
Primary Examiner